

CLEVELAND MUNICIPAL COURT
Justice Center - Level Two
1200 Ontario
Cleveland, Ohio 44113-1669

MAYRA PELAEZ MYERS

Plaintiff

SUMMONS IN ACTION FOR MONEY ONLY
IN SMALL CLAIMS CASES

FMS INC

Defendant

To Defendant FMS INC:

Plaintiff MAYRA PELAEZ MYERS is asking judgment in this court
against you for SEE COMPLAINT upon the claim as set forth in the complaint.

The Court will hold trial upon this claim at the Cleveland Municipal Court,
12TH floor, Justice Center, 1200 Ontario 12D at 10:00 08/13/2004.
Court Room Time Date

If you do not appear at the trial, judgment may be entered against you by default, and your earnings may be subjected to garnishment or your property may be attached to satisfy the judgment. If your defense is supported by witnesses, account books, receipts, or other documents, you must produce them at the trial. Subpoenas for witnesses, if requested by a party, will be issued by the Clerk.

If you admit the claim but desire time to pay, you may make such a request at the trial.

If you believe you have a claim against the plaintiff, you must file counterclaim with the court and must serve the plaintiff and all other parties with a copy of the counterclaim at least seven days prior to the trial of the plaintiff's claim.

If you wish to file a Motion for Continuance you must do so at least seven days prior to the trial date. You must serve all other parties with a copy of the Motion for Continuance.

WITNESS, EARLE B. TURNER, Clerk of said Court
and the seal thereof, at the City of Cleveland,
this date: 07/12/2004

EARLE B. TURNER, Clerk

by KANEP Deputy Clerk

2004CVI0018047 08/13/2004
FMS INC
4915 SOUTH UNION AVE
TULSA OK 74107

IN THE CLEVELAND MUNICIPAL COURT
SMALL CLAIMS DIVISION
CUYAHOGA COUNTY, OHIO

COURT ROOM: 12D
DATE OF HEARING: AUG 13 2004
TIME: 10:00 A.M.
04CV18047

MAYRA PELAEZ MYERS
19402 Ridgeland Avenue
Cleveland, Ohio 44135

Plaintiff

CASE NO.:

MAGISTRATE

COMPLAINT

-VS-

FMS, INC.
4915 South Union Avenue
Tulsa, Oklahoma 74107

Defendant

* * * *

EARLE B. TURNER, CLE
VELAND MUNICIPAL CL
FILE DATE
JUL -9 P 1:2
#1

COUNT I

(Violation of Fair Debt Collection Practices Act)

1. Plaintiff, Mayra Pelaez Myers, is a natural person residing in Cleveland, Ohio.
2. Defendant, FMS, Inc. (after this called FMS), is an Oklahoma corporation engaged in the business of collecting debts in this state with its principal place of business at Tulsa, Oklahoma. The principal purpose of Defendant FMS is the collection of debts using the mails and telephone, and Defendant FMS regularly attempts to collect debts alleged to be due another.
3. Defendant is a "debt collector" as defined by the Fair Debt Collection Practices Act (after this called FDCPA), 15 U.S.C. § 1692a(6).

4. By correspondence on the letterhead of "FMS INC.," dated April 16, 2004, Defendant mailed a collection letter to Plaintiff demanding payment of a debt in the amount of \$239.60 allegedly due Sunoco. A copy is attached hereto as Exhibit A.
5. Exhibit A was received by Plaintiff at her residence in Cleveland Ohio.
6. The alleged debt of Plaintiff claimed in Exhibit A was incurred for personal, family, or household services, i.e. gasoline.
7. Defendant FMS purchased the account allegedly owed to creditor Sunoco.
8. Defendants violated the FDCPA. Defendants' violations include, but are not limited to, the following:

(a) The Defendants violated 15 U.S.C. § 1692e(14) by using a business, company, or organization name "FMS INC." that is other than the true name of the debt collector's business, company, or organization.

(b) The Defendants violated 15 U.S.C. § 1692d *preface* by engaging in conduct the natural consequence of which is to harass, oppress, or abuse Plaintiff with the collected of the alleged debt.

9. As a result of the above violations of the FDCPA, the Defendants are liable to Plaintiff for Plaintiff's actual damages, statutory damages, and costs and attorney fees.

COUNT II
(Violations of Ohio Consumer Sales Practices Act)

10. Plaintiff incorporates the allegations set forth in paragraphs one through nine of this Complaint as if fully rewritten herein.
11. Plaintiff is a consumer as defined in Ohio Revised Code § 1345.01(D).

12. Defendant is a supplier as defined in Ohio Revised Code § 1345.01(D).
13. The transaction at issue is a "consumer transaction" as that term is defined in Ohio Revised Code § 1345.01(A).
14. In connection with said transaction, and throughout the course of dealing with Plaintiff, Defendant committed unfair, deceptive, and unconscionable acts and practices in violation of the Ohio Consumer Sales Practices Act and other state and federal laws. Such violations include, but are not limited to, operating a business under a fictitious name without registering the fictitious name with the Ohio Secretary of State; and other unfair and deceptive acts.
15. The acts and practices committed by the Defendant in connection with said transaction have been declared to be deceptive or unconscionable acts and practices by rules adopted pursuant to Ohio Revised Code § 1345.05(B)(2).
16. The acts and practices committed by Defendant in connection with said transaction have been determined by courts of this state to violate Ohio Revised Code § 1345.02 or Ohio Revised Code § 1345.03, and were committed after such court decisions were made available for public inspection pursuant to Ohio Revised Code § 1345.05(A)(3).
17. Defendant committed said acts and practices knowingly.
18. As a direct and proximate result of Defendant's conduct, Plaintiff suffered great frustration and aggravation, and other damages to be proven at the trial of this case.

COUNT III
(Violations of Cleveland Consumer Protection Code)

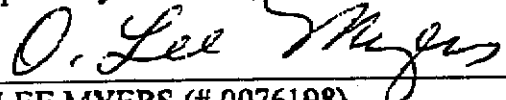
19. Plaintiff re alleges paragraphs one through eighteen of this Complaint as if fully rewritten herein.
20. Plaintiff is a consumer as defined in the City of Cleveland Ordinance 641.03.
21. Defendant is a merchant as defined in the City of Cleveland Ordinance 641.07.
22. The transaction at issue is a "transaction" as defined in the City of Cleveland Ordinance 641.10.
23. In connection with collecting the debt, Defendant violated the Cleveland Consumer Protection Code. Defendant's violations include, but are not limited to the following:
 - (a) Defendant violated City of Cleveland Ordinance 641.11(q) by operating a foreign corporation in Ohio without registering with the Ohio Secretary of State.
 - (b) Defendant violated City of Cleveland Ordinance 641.11(s) by: using a business name that is other than the true name of the debt collector's company; and collecting an amount unauthorized by contract or by law.
 - (c) Defendant violated City of Cleveland Ordinance 641.12 by committing unconscionable trade acts and practices. Such violations include, but are not limited to, using a business name that is other than the true name of the debt collector's company.
24. As a direct and proximate result of Defendant's conduct, Defendant is liable to Plaintiff for declaratory judgment that Defendants' conduct violated the Cleveland Consumer Protection Code, treble damages, and such other or further relief as is appropriate for the enforcement of the Cleveland Consumer Protection Code and elimination and prevention

of the violations thereof.

WHEREFORE, Mayra Pelaez Myers prays for judgment against Defendant as follows:

1. Statutory damages of \$1,000.00 for violations of the FDCPA;
2. Compensatory and statutory damages of \$1,000.00 for violations of the Ohio Consumer Sales Practices Act;
3. Compensatory and statutory damages of \$1,000.00 for violations of the Cleveland Protection Code;
4. Declaratory judgment that Defendant's practices herein complained of are unfair, deceptive, and unconscionable sales practices;
5. Attorney fees, expenses, and the costs of this action;
6. Such other relief as is reasonable and proper.

Respectfully submitted,


O. LEE MYERS (# 0076198)
4500 Lorain Avenue
Cleveland, Ohio 44102
(216) 334-1145
Attorney for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that a copy of the Plaintiff's Complaint was served by U.S. mail upon FMS, Inc., at 4915 South Union Avenue, Tulsa, Oklahoma 74107 this 9th day of July 2004.


O. LEE MYERS (OH Reg. # 0076198)
Attorney for Plaintiff

PO BOX 707600
TULSA, OK 74170-7600

RETURN SERVICE REQUESTED

April 16, 2004

3896319 - 570
MAYRA PELAEZ MYERS
19402 RIDGELAND AVE
CLEVELAND OH 44135-1036
|||||

FMS INC.

4915 South Union Avenue * Tulsa * Oklahoma * 74107
1-800-999-2443

IF PAYING BY VISA OR MASTERCARD FILL OUT FOLLOWING	
CHECK CARD USING FOR PAYMENT	
VISA <input type="checkbox"/>	AMERICAN EXPRESS <input type="checkbox"/>
Card Number	Amount
Cardholder Name	Exp. Date
Signature	Current Balance, \$239.60

FMS INC.
PO BOX 707600
TULSA, OK 74170-7600

*** PLEASE DETACH AND RETURN IN THE ENCLOSED ENVELOPE WITH YOUR PAYMENT ***

RE: FMS INC. FORMERLY SUNOCO
CUSTOMER NO.: 50032645751
ACCOUNT OF: MAYRA PELAEZ MYERS
ACCOUNT NO.: 3896319
TOTAL BALANCE DUE: \$239.60

FORMAL NOTIFICATION

This letter is to notify you that your account that was previously owed to SUNOCO has been purchased by FMS Inc. Please pay the full amount due to:

FMS INC.
PO BOX 707600
TULSA, OKLAHOMA 74170

If you are unable to pay the balance and would like to discuss payment arrangements, please contact us.

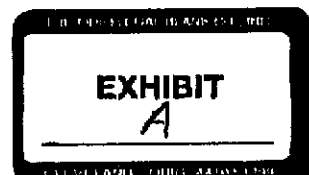
All payments must be made in U.S. currency.

*Any returned payment will be represented electronically.

UNLESS YOU NOTIFY THIS OFFICE WITHIN 30 DAYS AFTER RECEIVING THIS NOTICE THAT YOU DISPUTE THE VALIDITY OF THIS DEBT OR ANY PORTION THEREOF, THIS OFFICE WILL ASSUME THIS DEBT IS VALID. IF YOU NOTIFY THIS OFFICE IN WRITING WITHIN 30 DAYS FROM RECEIVING THIS NOTICE THAT YOU DISPUTE THE VALIDITY OF THIS DEBT OR ANY PORTION THEREOF, THIS OFFICE WILL OBTAIN VERIFICATION OF THE DEBT OR OBTAIN A COPY OF A JUDGMENT AND MAIL YOU A COPY OF SUCH JUDGMENT OR VERIFICATION. IF YOU REQUEST THIS OFFICE IN WRITING WITHIN 30 DAYS AFTER RECEIVING THIS NOTICE THIS OFFICE WILL PROVIDE YOU WITH THE NAME AND ADDRESS OF THE ORIGINAL CREDITOR, IF DIFFERENT FROM THE CURRENT CREDITOR.

THIS IS AN ATTEMPT TO COLLECT A DEBT.
ANY INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE.
THIS COMMUNICATION IS FROM A DEBT COLLECTOR.

We also accept payment by Western Union and MoneyGram.
Call us today at 800-999-2443 for information on these easy methods of payment.



Street Address: FMS INC. * 4915 South Union Avenue * Tulsa * Oklahoma * 74107
Office Hours: Monday through Friday 7:00 a.m. - 5:00 p.m. CST, Saturday 9:00 a.m. - 1:00 p.m. CST